

HOUSE BILL NO. 2235

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Wampler)

A BILL to amend and reenact §§ 54.1-2130, 54.1-2345.1, 54.1-2349 through 54.1-2352, 55.1-1800, 55.1-1802, 55.1-1805, 55.1-1816, 55.1-1820, 55.1-1820.1, 55.1-1822, 55.1-1823, 55.1-1904, 55.1-1937, 55.1-1951, 55.1-1951.1, 55.1-1972, 55.1-2101, 55.1-2133, 55.1-2133.1, 55.1-2151, and 55.1-2162 of the Code of Virginia; to amend the Code of Virginia by adding in Title 55.1 a chapter numbered 23.1, consisting of sections numbered 55.1-2307 through 55.1-2317; and to repeal Article 2 (§§ 55.1-1808 through 55.1-1814) of Chapter 18 and Article 5 (§§ 55.1-1990 through 55.1-1995) of Chapter 19 of Title 55.1 and § 55.1-2161 of the Code of Virginia, relating to common interest communities; Resale Disclosure Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2130, 54.1-2345.1, 54.1-2349 through 54.1-2352, 55.1-1800, 55.1-1802, 55.1-1805, 55.1-1816, 55.1-1820, 55.1-1820.1, 55.1-1822, 55.1-1823, 55.1-1904, 55.1-1937, 55.1-1951, 55.1-1951.1, 55.1-1972, 55.1-2101, 55.1-2133, 55.1-2133.1, 55.1-2151, and 55.1-2162 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 55.1 a chapter numbered 23.1, consisting of sections numbered 55.1-2307 through 55.1-2317, as follows:

§ 54.1-2130. Definitions.

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition

27 to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall
28 be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real
29 estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that
30 specifically states that the real estate licensee is acting as an independent contractor and not as an agent
31 shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee
32 and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and
33 E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3
34 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E
35 of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise
36 shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or
37 represents a client in an agency relationship in a residential real estate transaction shall either represent
38 such client as a standard agent or a limited service agent.

39 "Agent" means a real estate licensee who is acting as (i) a standard agent in a residential real estate
40 transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a
41 commercial real estate transaction.

42 "Brokerage agreement" means the written agreement creating a brokerage relationship between a
43 client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent
44 the client as an agent or an independent contractor.

45 "Brokerage relationship" means the contractual relationship between a client and a real estate
46 licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant,
47 or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

48 "Client" means a person who has entered into a brokerage relationship with a licensee.

49 "Commercial real estate" means any real estate other than (i) real estate containing one to four
50 residential units or (ii) real estate classified for assessment purposes under § 58.1-3230. Commercial real
51 estate shall not include single family residential units, including condominiums, townhouses, apartments,
52 or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a
53 larger building or parcel of real estate containing more than four residential units.

54 "Common source information company" means any person, firm, or corporation that is a source,
55 compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but
56 is not limited to, multiple listing services.

57 "Customer" means a person who has not entered into a brokerage relationship with a licensee but
58 for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a
59 brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee
60 rather than a client.

61 "Designated agent" or "designated representative" means a licensee who has been assigned by a
62 principal or supervising broker to represent a client when a different client is also represented by such
63 principal or broker in the same transaction. A designated representative shall only act as an independent
64 contractor.

65 "Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both
66 seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an
67 agency relationship under brokerage agreements with the clients. A dual representative has an independent
68 contractor relationship under brokerage agreements with the clients. A dual representative shall only act
69 as an independent contractor.

70 "Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship
71 based upon a brokerage agreement that specifically states that the real estate licensee is acting as an
72 independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the
73 brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and
74 subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132;
75 subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and
76 subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-
77 2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135.

78 "Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.).

79 "Limited service agent" means a licensee who acts for or represents a client in a residential real
80 estate transaction pursuant to a brokerage agreement that provides that the limited service agent will not

81 provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and
82 54.1-2134, inclusive. A limited service agent shall have the obligations set out in the brokerage agreement,
83 except that a limited service agent shall provide the client, at the time of entering the brokerage agreement,
84 copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized
85 by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the
86 client under the Virginia Residential Property Disclosure Act (§ 55.1-700 et seq.); (ii) if the client is selling
87 a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as
88 purchaser, the ~~condominium~~ resale certificate required by § ~~55.1-1990~~ 55.1-2309; and (iii) if the client is
89 selling a property subject to the Property Owners' Association Act (§ 55.1-1800 et seq.), the rights and
90 obligations of the client to deliver to the purchasers, or to receive as purchaser, the ~~association disclosure~~
91 ~~packet required by § 55.1-1809~~ resale certificate required by § 55.1-2309.

92 "Ministerial acts" means those routine acts which a licensee can perform for a person which do not
93 involve discretion or the exercise of the licensee's own judgment.

94 "Property management agreement" means the written agreement between a property manager and
95 the owner of real estate for the management of the real estate.

96 "Residential real estate" means real property containing from one to four residential dwelling units
97 and the sale of lots containing one to four residential dwelling units.

98 "Standard agent" means a licensee who acts for or represents a client in an agency relationship in
99 a residential real estate transaction. A standard agent shall have the obligations as provided in this article
100 and any additional obligations agreed to by the parties in the brokerage agreement.

101 **§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a**
102 **common interest community.**

103 A. An arrangement between the associations for two or more common interest communities to
104 share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real
105 estate, or other activities specified in their arrangement or declarations does not create a separate common
106 interest community, or an arrangement between an association and the owner of real estate that is not part
107 of a common interest community to share the costs of real estate taxes, insurance premiums, services,

108 maintenance, or improvements of real estate, or other activities specified in their arrangement does not
109 create a separate common interest community. Assessments against the lots in the common interest
110 community required by such arrangement shall be included in the periodic budget for the common interest
111 community, and the arrangement shall be disclosed in all required public offering statements and
112 ~~disclosure packets~~ resale certificates.

113 B. A covenant requiring the owners of separately owned parcels of real estate to share costs or
114 other obligations associated with a party wall, driveway, well, or other similar use does not create a
115 common interest community unless the owners otherwise agree to create such community.

116 **§ 54.1-2349. Powers and duties of the Board.**

117 A. The Board shall administer and enforce the provisions of this article. In addition to the
118 provisions of §§ 54.1-201 and 54.1-202, the Board shall:

119 1. Promulgate regulations necessary to carry out the requirements of this article in accordance with
120 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), including the prescription of fees,
121 procedures, and qualifications for the issuance and renewal of common interest community manager
122 licenses. Upon application for license and each renewal thereof, the applicant shall pay a fee established
123 by the Board, which shall be placed to the credit of the Common Interest Community Management
124 Information Fund established pursuant to § 54.1-2354.2;

125 2. Establish criteria for the licensure of common interest community managers to ensure the
126 appropriate training and educational credentials for the provision of management services to common
127 interest communities. Such criteria may include experiential requirements and shall include designation
128 as an Accredited Association Management Company by the Community Associations Institute. As an
129 additional alternative to such designation, the Board shall have authority, by regulation, to include one of
130 the following: (i) successful completion of another Board-approved training program and certifying
131 examination or (ii) successful completion of a Virginia testing program to determine the quality of the
132 training and educational credentials for and competence of common interest community managers;

133 3. Establish criteria for the certification of the employees of common interest community managers
134 who have principal responsibility for management services provided to a common interest community or

135 who have supervisory responsibility for employees who participate directly in the provision of
136 management services to a common interest community to ensure the person possesses the character and
137 minimum skills to engage properly in the provision of management services to a common interest
138 community. Such criteria shall include designation as a Certified Manager of Community Associations by
139 the Community Association Managers International Certification Board, designation as an Association
140 Management Specialist by the Community Associations Institute, or designation as a Professional
141 Community Association Manager by the Community Associations Institute. As an additional alternative
142 to such designations, the Board shall have authority, by regulation, to include one of the following: (i)
143 successful completion of another Board-approved training program as developed by the Virginia
144 Association of Realtors or other organization, and certifying examination, or (ii) successful completion of
145 a Virginia testing program to determine the quality of the training and educational credentials for and
146 competence of the employees of common interest community managers who participate directly in the
147 provision of management services to a common interest community. The fee paid to the Board for the
148 issuance of such certificate shall be paid to the Common Interest Community Management Information
149 Fund established pursuant to § 54.1-2354.2;

150 4. Approve the criteria for accredited common interest community manager training programs;

151 5. Approve accredited common interest community manager training programs;

152 6. Establish, by regulation, standards of conduct for common interest community managers and
153 for employees of common interest community managers certified in accordance with the provisions of
154 this article;

155 7. Establish, by regulation, an education-based certification program for persons who are involved
156 in the business or activity of providing management services for compensation to common interest
157 communities. The Board shall have the authority to approve training courses and instructors in furtherance
158 of the provisions of this article;

159 8. Issue a certificate of registration to each association that has properly filed in accordance with
160 this chapter; and

161 9. Develop and publish best practices for the content of declarations consistent with the
162 requirements of the Property Owners' Association Act (§ 55.1-1800 et seq.).

163 B. 1. The Board shall have the sole responsibility for the administration of this article and for the
164 promulgation of regulations to carry out the requirements thereof.

165 2. The Board shall also be responsible for the enforcement of this article, provided that the Real
166 Estate Board shall have the sole responsibility for the enforcement of this article with respect to a real
167 estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21
168 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

169 3. For purposes of enforcement of this article or the Property Owners' Association Act (§ 55.1-
170 1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative
171 Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or the Resale
172 Disclosure Act (§ 55.1-2307 et seq.), any requirement for the conduct of a hearing shall be satisfied by an
173 informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative
174 Process Act (§ 2.2-4000 et seq.).

175 C. The Board is authorized to obtain criminal history record information from any state or federal
176 law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained
177 is for the exclusive use of the Board and shall not be released to any other person or agency except in
178 furtherance of the investigation of the applicant or with the authorization of the applicant or upon court
179 order.

180 D. Notwithstanding the provisions of subsection A of § 54.1-2354.4, the Board may receive a
181 complaint directly from any person aggrieved by an association's failure to deliver a resale certificate ~~or~~
182 ~~disclosure packet within the time period required under § 55.1-1809, 55.1-1810, 55.1-1811, 55.1-1900,~~
183 ~~55.1-1992, or 55.1-2161~~ in accordance with Chapter 23.1 (§ 55.1-2307 et seq.) of Title 55.1.

184 **§ 54.1-2350. Annual report; form to accompany resale certificates.**

185 In addition to the provisions of § 54.1-2349, the Board shall:

186 1. Administer the provisions of Article 2 (§ 54.1-2354.1 et seq.);

187 2. Develop and disseminate an association annual report form for use in accordance with §§ 55.1-
188 1835, 55.1-1980, and 55.1-2182; and

189 3. Develop and disseminate a standardized resale certificate form to accompany resale certificates
190 required pursuant to § 55.1-1990 and association disclosure packets required pursuant to § 55.1-1809,
191 which form shall summarize the unique characteristics of common interest communities generally that
192 may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest
193 community. The form shall include information on the following, which may or may not be applicable to
194 a particular common interest community: (i) the obligation on the part of an owner to pay regular annual
195 or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments;
196 (iii) the purposes for which such assessments, if any, may be used, including for the construction or
197 maintenance of stormwater management facilities; (iv) the importance the declaration of restrictive
198 covenants or condominium instruments, as applicable, and other governing documents play in association
199 living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to
200 park or store certain types of motor vehicles or boats within the common interest community; (vii)
201 limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas
202 or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on
203 an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or
204 length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally
205 binding document once it is signed by the prospective purchaser where the purchaser has not elected to
206 cancel the purchase contract in accordance with law contain disclosure statements in the order listed in §
207 55.1-2310. The form shall provide for the attachment of reference documents and contain space for an
208 association to indicate those disclosures that pertain to its particular community. The form shall also
209 provide that (a) the purchaser remains responsible for his own examination of the materials that constitute
210 the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b)
211 the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents
212 of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies
213 between the form and the resale certificate or disclosure packet attached reference documents.

214 **§ 54.1-2351. General powers and duties of Board concerning associations.**

215 A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with
216 and in furtherance of the objectives of this article, but the Board may not intervene in the internal activities
217 of an association except to the extent necessary to prevent or cure violations of this article or of the chapter
218 pursuant to which the association is created. The Board may prescribe forms and procedures for submitting
219 information to the Board.

220 B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act
221 or practice in violation of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the
222 Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100
223 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§
224 55.1-2307 et seq.), or any of the Board's regulations or orders, the Board without prior administrative
225 proceedings may bring an action in the appropriate court to enjoin that act or practice or for other
226 appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

227 C. The Board may intervene in any action involving a violation by a declarant or a developer of a
228 time-share project of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia
229 Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.),
230 ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307
231 et seq.), or any of the Board's regulations or orders.

232 D. The Board may accept grants-in-aid from any governmental source and may contract with
233 agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of
234 this article.

235 E. The Board may cooperate with agencies performing similar functions in this and other
236 jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform
237 administrative practices, and may develop information that may be useful in the discharge of the Board's
238 duties.

239 F. In issuing any cease and desist order, the Board shall state the basis for the adverse determination
240 and the underlying facts.

241 G. Without limiting the remedies that may be obtained under this article, the Board, without
242 compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce
243 the provisions of this section and may institute proceedings in equity to enjoin any person, partnership,
244 corporation, or any other entity violating this article, the Property Owners' Association Act (§ 55.1-1800
245 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act
246 (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale
247 Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders. Such proceedings shall
248 be brought in the name of the Commonwealth by the Board in the circuit court or general district court of
249 the city or county in which the unlawful act occurred or in which the defendant resides.

250 H. The Board may assess a monetary penalty to be paid to the Common Interest Community
251 Management Information Fund of not more than \$1,000 per violation against any governing board that
252 violates any provision of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the
253 Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100
254 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§
255 55.1-2307 et seq.), or any of the Board's regulations or orders. In determining the amount of the penalty,
256 the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may
257 be assessed under this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia
258 Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.),
259 ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the Resale Disclosure Act (§ 55.1-2307
260 et seq.), or any of the Board's regulations or orders unless the governing board has been given notice and
261 an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty
262 may be sued for and recovered in the name of the Commonwealth.

263 **§ 54.1-2352. Cease and desist orders.**

264 A. The Board may issue an order requiring the governing board of the association to cease and
265 desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will
266 carry out the purposes of this article, if the Board determines after notice and hearing that the governing
267 board of an association has:

268 1. Violated any statute or regulation of the Board governing the association regulated pursuant to
269 this article, including engaging in any act or practice in violation of this article, the Property Owners'
270 Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia
271 Real Estate Cooperative Act (§ 55.1-2100 et seq.), ~~or~~ the Virginia Real Estate Time-Share Act (§ 55.1-
272 2200 et seq.), the Resale Disclosure Act (§ 55.1-2307 et seq.), or any of the Board's regulations or orders;
273 2. Failed to register as an association or to file an annual report as required by statute or regulation;
274 3. Materially misrepresented facts in an application for registration or an annual report; or
275 4. Willfully refused to furnish the Board information or records required or requested pursuant to
276 statute or regulation.

277 B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed
278 by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative
279 action as may be deemed appropriate by the Board. Prior to issuing the temporary order, the Board shall
280 give notice of the proposal to issue a temporary order to the person. Every temporary order shall include
281 in its terms a provision that upon request a hearing will be held promptly to determine whether or not it
282 becomes permanent.

283 **§ 55.1-1800. Definitions.**

284 As used in this chapter, unless the context requires a different meaning:

285 "Association" means the property owners' association.

286 "Board of directors" means the executive body of a property owners' association or a committee
287 that is exercising the power of the executive body by resolution or bylaw.

288 "Capital components" means those items, whether or not a part of the common area, for which the
289 association has the obligation for repair, replacement, or restoration and for which the board of directors
290 determines funding is necessary.

291 "Common area" means property within a development which is owned, leased, or required by the
292 declaration to be maintained or operated by a property owners' association for the use of its members and
293 designated as a common area in the declaration.

294 "Common interest community" means the same as that term is defined in § 54.1-2345.

295 "Common interest community manager" means the same as that term is defined in § 54.1-2345.

296 "Declarant" means the person or entity signing the declaration and its successors or assigns who
297 may submit property to a declaration.

298 "Declaration" means any instrument, however denominated, recorded among the land records of
299 the county or city in which the development or any part of such development is located, that either (i)
300 imposes on the association maintenance or operational responsibilities for the common area or (ii) creates
301 the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other
302 entity any mandatory payment of money in connection with the provision of maintenance or services for
303 the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration"
304 includes any amendment or supplement to the instruments described in this definition. "Declaration" does
305 not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

306 "Development" means real property located within the Commonwealth subject to a declaration
307 which contains both lots, at least some of which are residential or are occupied for recreational purposes,
308 and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an
309 association and is obligated to pay assessments provided for in a declaration.

310 ~~"Disclosure packet update" means an update of the financial information referenced in~~
311 ~~subdivisions A 2 through 9 of § 55.1-1809. The update shall include a copy of the original disclosure~~
312 ~~packet.~~

313 "Electronic means" means any form of communication, not directly involving the physical
314 transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of
315 such communication. A meeting conducted by electronic means includes a meeting conducted via
316 teleconference, videoconference, Internet exchange, or other electronic methods. Any term used in this
317 definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning
318 set forth in such section.

319 ~~"Financial update" means an update of the financial information referenced in subdivisions A 2~~
320 ~~through 7 of § 55.1-1809.~~

321 "Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown
322 on a recorded subdivision plat for a development or the boundaries of which are described in the
323 declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than
324 a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the
325 condominium or cooperative is a part of a development.

326 "Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a
327 foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located.

328 "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

329 "Professionally managed" means a common interest community that has engaged (i) a common
330 interest community manager to provide management services to the community or (ii) a person as an
331 employee for compensation to provide management services to the community, other than a resident of
332 the community who provides bookkeeping, billing, or recordkeeping services for that community.

333 "Property owners' association" or "association" means an incorporated or unincorporated entity
334 upon which responsibilities are imposed and to which authority is granted in the declaration.

335 "Resale certificate" means a certificate issued by an association pursuant to §§ 55.1-2309 and 55.1-
336 2310.

337 "Settlement agent" means the same as that term is defined in § 55.1-1000.

338 **§ 55.1-1802. Developer to register and file annual report; payment of real estate taxes**
339 **attributable to the common area.**

340 A. Unless control of the association has been transferred to the members, the developer shall
341 register the association with the Common Interest Community Board within 30 days after recordation of
342 the declaration and thereafter shall ensure that the report required pursuant to § 55.1-1835 and any required
343 update has been filed.

344 B. Upon the transfer of the common area to the association, the developer shall pay all real estate
345 taxes attributable to the open or common space as defined in § 58.1-3284.1 through the date of the transfer
346 to the association.

347 **§ 55.1-1805. Association charges.**

348 Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no
349 association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge
350 is a fee for services provided or related to use of the common area or (ii) charge a fee related to the
351 ~~provisions set out in § 55.1-1810 or 55.1-1811 that is not~~ issuance of a resale certificate pursuant to §
352 55.1-2309 or 55.1-2311 except as expressly authorized in these sections § 55.1-2316. Nothing in this
353 chapter shall be construed to authorize an association or common interest community manager to charge
354 an inspection fee for an unimproved or improved lot except as provided in ~~§ 55.1-1810 or 55.1-1811~~ § 55.1-
355 2316. The Common Interest Community Board may assess a monetary penalty for a violation of this
356 section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager
357 pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2352.

358 **§ 55.1-1816. Meetings of the board of directors.**

359 A. All meetings of the board of directors, including any subcommittee or other committee of the
360 board of directors, where the business of the association is discussed or transacted shall be open to all
361 members of record. The board of directors shall not use work sessions or other informal gatherings of the
362 board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings
363 of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-
364 1815.

365 B. Notice of the time, date, and place of each meeting of the board of directors or of any
366 subcommittee or other committee of the board of directors shall be published where it is reasonably
367 calculated to be available to a majority of the lot owners.

368 A lot owner may make a request to be notified on a continual basis of any such meetings. Such
369 request shall be made at least once a year in writing and include the lot owner's name, address, zip code,
370 and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner
371 requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by
372 email in the case of meetings of any subcommittee or other committee of the board of directors.

373 Notice, reasonable under the circumstances, of special or emergency meetings shall be given
374 contemporaneously with the notice provided to members of the association's board of directors or any
375 subcommittee or other committee of the board of directors conducting the meeting.

376 Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one
377 copy of all agenda packets and materials furnished to members of an association's board of directors or
378 subcommittee or other committee of the board of directors for a meeting shall be made available for
379 inspection by the membership of the association at the same time such documents are furnished to the
380 members of the board of directors or any subcommittee or committee of the board of directors.

381 Any member may record any portion of a meeting that is required to be open. The board of
382 directors or subcommittee or other committee of the board of directors conducting the meeting may adopt
383 rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent
384 interference with the proceedings and (b) requiring the member recording the meeting to provide notice
385 that the meeting is being recorded.

386 Except for the election of officers, voting by secret or written ballot in an open meeting shall be a
387 violation of this chapter.

388 C. The board of directors or any subcommittee or other committee of the board of directors may
389 (i) convene in executive session to consider personnel matters; (ii) consult with legal counsel; (iii) discuss
390 and consider contracts, pending or probable litigation, and matters involving violations of the declaration
391 or rules and regulations ~~adopted pursuant to such declaration for which a member or his family members,
392 tenants, guests, or other invitees are responsible~~; or (iv) discuss and consider the personal liability of
393 members to the association, upon the affirmative vote in an open meeting to assemble in executive session.
394 The motion shall state specifically the purpose for the executive session. Reference to the motion and the
395 stated purpose for the executive session shall be included in the minutes. The board of directors shall
396 restrict the consideration of matters during such portions of meetings to only those purposes specifically
397 exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in
398 executive session shall become effective unless the board of directors or subcommittee or other committee
399 of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on

400 such contract, motion, or other action, which shall have its substance reasonably identified in the open
401 meeting. The requirements of this section shall not require the disclosure of information in violation of
402 law.

403 D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide
404 a designated period during each meeting to allow members an opportunity to comment on any matter
405 relating to the association. During a meeting at which the agenda is limited to specific topics or at a special
406 meeting, the board of directors may limit the comments of members to the topics listed on the meeting
407 agenda.

408 **§ 55.1-1820. Display of the flag of the United States; necessary supporting structures;**
409 **affirmative defense.**

410 A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-
411 243), no association shall prohibit any lot owner from displaying upon property to which the lot owner
412 has a separate ownership interest or a right to exclusive possession or use the flag of the United States
413 whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1
414 et seq.), or any rule or custom pertaining to the proper display of the flag. The association may, however,
415 establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the
416 flag on such property, provided that such restrictions are necessary to protect a substantial interest of the
417 association.

418 B. The association may restrict the display of such flag in the common areas.

419 C. In any action brought by the association under § 55.1-1819 for violation of a flag restriction,
420 the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner
421 of placement or display of such flag are necessary to protect a substantial interest of the association.

422 D. In any action brought by the association under § 55.1-1819, the lot owner shall be entitled to
423 assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of
424 flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure
425 ~~packet resale certificate as required pursuant to by § 55.1-1809~~ 55.1-2310.

426 **§ 55.1-1820.1. Installation of solar energy collection devices.**

427 A. As used in this section, "solar energy collection device" means any device manufactured and
428 sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive
429 heating panels or building components and solar photovoltaic apparatus.

430 B. No association shall prohibit an owner from installing a solar energy collection device on that
431 owner's property unless the recorded declaration for the association establishes such a prohibition.
432 However, an association may establish reasonable restrictions concerning the size, place, and manner of
433 placement of such solar energy collection devices on property designated and intended for individual
434 ownership and use. Any ~~disclosure packet~~ resale certificate issued pursuant to ~~§ 55.1-1809~~ 55.1-2309
435 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the
436 right of an owner to install or use solar energy collection devices on his property.

437 C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular
438 proposal (i) increases the cost of installation of the solar energy collection device by five percent over the
439 projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy
440 collection device by 10 percent below the projected energy production of the initially proposed
441 installation. The owner shall provide documentation prepared by an independent solar panel design
442 specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed
443 in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according
444 to the criteria established in this subsection.

445 D. The association may prohibit or restrict the installation of solar energy collection devices on
446 the common elements or common area within the real estate development served by the association. An
447 association may establish reasonable restrictions as to the number, size, place, and manner of placement
448 or installation of any solar energy collection device installed on the common elements or common area.

449 **§ 55.1-1822. Use of for sale signs in connection with sale.**

450 Except as expressly authorized in this chapter or in the declaration or as otherwise provided by
451 law, no ~~property owners'~~ association shall require the use of any for sale sign that is (i) an association sign
452 or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. An
453 association may, however, prohibit the placement of signs in the common area and establish reasonable

454 rules and regulations that regulate (a) the number of real estate signs to be located on real property upon
455 which the owner has a separate ownership interest or a right of exclusive possession, so long as at least
456 one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which
457 the owner has a separate ownership interest or a right of exclusive possession, so long as the location of
458 the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real
459 estate signs are affixed to real property; and (d) the period of time after settlement when the real estate
460 signs on such real property shall be removed.

461 **§ 55.1-1823. Designation of authorized representative.**

462 Except as expressly authorized in this chapter or in the declaration or as otherwise provided by
463 law, no ~~property owners'~~ association shall require any lot owner to execute a formal power of attorney if
464 the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's
465 authorized representative, and the association shall recognize such representation without a formal power
466 of attorney, provided that the association is given a written authorization that includes the designated
467 representative's name, contact information, and license number and the lot owner's signature.
468 Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act
469 (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be
470 satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

471 **§ 55.1-1904. Association charges.**

472 Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise
473 provided by law, no unit owners' association may make an assessment or impose a charge against a unit
474 owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii) related
475 to the provisions set out in ~~§ 55.1-1992~~ § 55.1-2316. The Common Interest Community Board may assess
476 a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to §
477 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a cease and
478 desist order pursuant to § 54.1-2352.

479 **§ 55.1-1937. Termination of condominium.**

480 A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the
481 condominium. An instrument terminating a condominium signed by the declarant is effective upon
482 recordation of such instrument. But this section shall not be construed to nullify, limit, or otherwise affect
483 the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right
484 hereby conferred.

485 B. Except in the case of a taking of all the units by eminent domain, if any of the units in the
486 condominium is restricted exclusively to residential use and there is any unit owner other than the
487 declarant, the condominium may be terminated only by the agreement of unit owners of units to which
488 four-fifths of the votes in the unit owners' association appertain, or such larger majority as the
489 condominium instruments may specify. If none of the units in the condominium is restricted exclusively
490 to residential use, the condominium instruments may specify a majority smaller than the minimum
491 specified in this subsection.

492 C. Agreement of the required majority of unit owners to termination of the condominium shall be
493 evidenced by their execution of a termination agreement, or ratifications of such agreement, and such
494 agreement is effective when a copy of the termination agreement is recorded together with a certification,
495 signed by the principal officer of the unit owners' association or by such other officer as the condominium
496 instruments may specify, that the requisite majority of the unit owners signed the termination agreement
497 or ratifications. Unless the termination agreement otherwise provides, prior to recordation of the
498 termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only
499 with the approval of unit owners of units to which a majority of the votes in the unit owners' association
500 appertain. Any unit owner acquiring a unit subsequent to approval of a termination agreement but prior to
501 recordation of the termination agreement shall be deemed to have consented to the termination agreement.
502 Upon approval of a termination agreement and until recordation of the termination agreement, a copy of
503 the termination agreement shall be included with the resale certificate required by ~~§ 55.1-1990~~ § 55.1-2309.
504 The termination agreement shall specify a date after which the termination agreement is void if the
505 termination agreement is not recorded. For the purposes of this section, an instrument terminating a

506 condominium and any ratification of such instrument shall be deemed a condominium instrument subject
507 to the provisions of § 55.1-1911.

508 D. A termination agreement may provide that all of the common elements and units of the
509 condominium shall be sold or otherwise disposed of following termination. If, pursuant to the termination
510 agreement, any property in the condominium is sold or disposed of following termination, the termination
511 agreement shall set forth the minimum terms of the sale or disposition.

512 E. In the case of a master condominium that contains a unit that is a part of another condominium,
513 a termination agreement for the master condominium shall not terminate the other condominium.

514 F. On behalf of the unit owners, the unit owners' association may contract for the disposition of
515 property in the condominium, but the contract shall not be binding on the unit owners until approved
516 pursuant to subsections B and C. If the termination agreement requires that any property in the
517 condominium be sold or otherwise disposed of following termination, title to the property, upon
518 termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units.
519 Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale or
520 disposition. Until the termination has been concluded and the proceeds have been distributed, the unit
521 owners' association shall continue in existence with all the powers the unit owners' association had before
522 termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may
523 appear, in proportion to the respective interests of the unit owners as provided in subsection I. Unless
524 otherwise specified in the termination agreement, for as long as the unit owners' association holds title to
525 the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the
526 portion of the property that formerly constituted his unit. During the period that the unit owner or his
527 successor in interest has the right to occupancy, each unit owner or his successor in interest shall remain
528 liable for any assessment or other obligation imposed on the unit owner by this chapter or the
529 condominium instruments.

530 G. If the property that constitutes the condominium is not sold or otherwise disposed of following
531 termination, title to all the property in the condominium shall vest in the unit owners, upon termination,
532 as tenants in common in proportion to the unit owners' respective interests as provided in subsection I. In

533 such an event, any liens on a unit shall shift accordingly, and a lien may be enforced only against a unit
534 owner's tenancy in common interest, but the lien shall not encumber the entire property formerly
535 constituting the condominium. While the tenancy in common exists, each unit owner or his successor in
536 interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted
537 the unit owner's unit.

538 H. Following termination of the condominium, the proceeds of any sale of property, together with
539 the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit
540 owners or lien holders on the units as their interests may appear. Following termination, any creditor of
541 the unit owners' association who holds a lien on the unit that was recorded before termination may enforce
542 the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be
543 treated as if he had perfected a lien on the units immediately before termination.

544 I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the
545 unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and
546 H shall be as follows:

547 1. Except as provided in subdivision 3, the respective interests of the unit owners shall be as set
548 forth in the termination agreement.

549 2. Except as provided in subdivision 3, if the respective interests of the unit owners are based on
550 the respective fair market values of their units, limited common elements, and common element interests
551 immediately before the termination, the fair market values shall be determined by one or more independent
552 appraisers selected by the unit owners' association. The decision of the independent appraisers shall be
553 distributed to the unit owners and become final unless disapproved within 30 days after distribution by
554 unit owners of units to which one quarter of the votes in the unit owners' association appertain. The
555 proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair
556 market value of that unit owner's unit and common element interest by the total fair market values of all
557 the units and their common element interests.

558 3. If the method of determining the respective interests of the unit owners in the proceeds of sale
559 or disposition is other than the fair market values, then the association shall provide each unit owner with

560 a notice stating the result of that method for his unit and, no later than 30 days after transmission of that
561 notice, if 10 percent of the unit owners dispute the interest to be distributed to their units, those unit owners
562 may require the association to obtain an independent appraisal of the condominium units. If the fair market
563 value of the units of the objecting unit owners is at least 10 percent more than the amount that the unit
564 owners would have received using the method agreed upon by the membership, then the association shall
565 adjust the respective interests of the unit owners so that each unit owner's share is based on the fair market
566 value for each unit. If the fair market value is less than 10 percent more than the amount that the objecting
567 unit owners would have received using the agreed-upon method, then the agreed-upon method shall be
568 implemented and the objecting unit owners shall receive the distribution less their pro rata share of the
569 cost of their appraisal.

570 4. If the method of determining the respective interests of the unit owners cannot be implemented
571 because any unit or limited common element is destroyed, the interests of all unit owners are the unit
572 owners' respective common element interests immediately before the termination.

573 5. Unless the termination agreement provides otherwise, each unit owner shall satisfy and cause
574 the release of any mortgage, deed of trust, lease, or other lien or encumbrance on his unit at the time
575 required by the termination agreement.

576 J. Except as provided in subsection K, foreclosure of any mortgage, deed of trust, or other lien, or
577 enforcement of a mortgage, deed of trust, or other lien or encumbrance against the entire condominium,
578 shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance
579 against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from
580 the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall
581 not alone withdraw the land from the condominium, but the person who takes title to the withdrawable
582 land shall have the right to require from the unit owners' association, upon request, an amendment that
583 excludes the land from the condominium.

584 K. If a lien or encumbrance against a portion of the property that comprises the condominium has
585 priority over the condominium instruments and the lien or encumbrance has not been partially released,

586 upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes
587 the property subject to the lien or encumbrance from the condominium.

588 **§ 55.1-1951. Display of the flag of the United States; necessary supporting structures;**
589 **affirmative defense.**

590 A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-
591 243), no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit
592 owner from displaying upon property to which the unit owner has a separate ownership interest or a right
593 to exclusive possession or use the flag of the United States whenever such display is in compliance with
594 Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1 et seq.) or any rule or custom pertaining to
595 the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions
596 as to the size, place, duration, and manner of placement or display of the flag on such property, provided
597 that such restrictions are necessary to protect a substantial interest of the unit owners' association.

598 B. The unit owners' association may restrict the display of such flags in the common elements.

599 C. In any action brought by the unit owners' association under § 55.1-1959 for a violation of a flag
600 restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size,
601 place, duration, and manner of placement or display of such flag are necessary to protect a substantial
602 interest of the unit owners' association.

603 D. In any action brought by the unit owners' association under § 55.1-1959, the unit owner shall
604 be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to
605 the flag of the United States or any flagpole or similar structure necessary to display the flag of the United
606 States was not contained in the public offering statement or resale certificate, as appropriate, required
607 pursuant to § 55.1-1976 or ~~55.1-1991~~ 55.1-2309.

608 **§ 55.1-1951.1. Installation of solar energy collection devices.**

609 A. As used in this section, "solar energy collection device" means any device manufactured and
610 sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive
611 heating panels or building components and solar photovoltaic apparatus.

612 B. No unit owners' association shall prohibit an owner from installing a solar energy collection
613 device on that owner's property unless the recorded declaration for the unit owners' association establishes
614 such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning
615 the size, place, and manner of placement of such solar energy collection devices on property designated
616 and intended for individual ownership and use. Any resale certificate pursuant to ~~§ 55.1-1990~~ 55.1-2309
617 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the
618 right of an owner to install or use solar energy collection devices on his property.

619 C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular
620 proposal (i) increases the cost of installation of the solar energy collection device by five percent over the
621 projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy
622 collection device by 10 percent below the projected energy production of the initially proposed
623 installation. The owner shall provide documentation prepared by an independent solar panel design
624 specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed
625 in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable
626 according to the criteria established in this subsection.

627 D. The unit owners' association may prohibit or restrict the installation of solar energy collection
628 devices on the common elements or common area within the real estate development served by the unit
629 owners' association. A unit owners' association may establish reasonable restrictions as to the number,
630 size, place, and manner of placement or installation of any solar energy collection device installed on the
631 common elements or common area.

632 **§ 55.1-1972. Exemptions from certain provisions of article.**

633 A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter,
634 the provisions of §§ 55.1-1974 through 55.1-1979, subsections B and D of § 55.1-1982, and §§ ~~55.1-1990~~
635 ~~and 55.1-1991~~ 55.1-2308 and 55.1-2309 do not apply to:

- 636 1. Dispositions pursuant to court order;
- 637 2. Dispositions by any government or government agency;
- 638 3. Offers by the declarant on nonbinding reservation agreements;

639 4. Dispositions in a residential condominium in which there are three or fewer units, so long as the
640 condominium instruments do not reserve to the declarant the right to create additional condominium units;
641 or

642 5. A disposition of a unit by a sale at an auction where a current public offering statement or resale
643 certificate was made available as part of an auction package for prospective purchasers prior to the auction
644 sale.

645 B. In cases of dispositions in a condominium where all units are restricted to nonresidential use,
646 the provisions of §§ 55.1-1974 through 55.1-1983 shall not apply, unless the method of offer or disposition
647 is adopted for the purpose of evasion of this chapter.

648 **§ 55.1-2101. Applicability.**

649 A. This chapter applies to all cooperatives created within the Commonwealth after July 1, 1982.
650 Unless the declaration provides that the entire chapter is applicable, such a cooperative is subject only to
651 §§ 55.1-2104 and 55.1-2105 if the cooperative contains only units restricted to nonresidential use or
652 contains no more than three units and is not subject to any development rights.

653 B. Except as provided in subsection C, §§ 55.1-2100, 55.1-2104, 55.1-2105, 55.1-2109, 55.1-2114,
654 and 55.1-2131, subdivisions A 1 through 6 and 11 through 17 of § 55.1-2133, and §§ 55.1-2143, 55.1-
655 2148, 55.1-2151, ~~55.1-2161~~, 55.1-2169, ~~and 55.1-2170~~, and 55.1-2309 apply to all cooperatives created
656 in the Commonwealth before July 1, 1982. Those sections apply only with respect to events and
657 circumstances occurring after July 1, 1982, and do not invalidate existing provisions of the cooperative
658 documents of those cooperatives. With regard to any cooperative created before July 1, 1982, § 55.1-2104
659 applies only to real estate acquired by that cooperative's association on or after that date. For the purposes
660 of this section, a cooperative was created before July 1, 1982, if the cooperative was conveyed to the
661 association before that date.

662 C. If a cooperative created within the Commonwealth before July 1, 1982, contains no more than
663 three units and is not subject to any development rights, it is subject only to §§ 55.1-2104 and 55.1-2105,
664 unless the declaration is amended to make any or all of the sections enumerated in subsection B apply to
665 that cooperative.

666 D. This chapter does not apply to cooperatives or cooperative interests located outside the
667 Commonwealth, but the public offering statement provisions as given in §§ 55.1-2153 through 55.1-2160
668 apply to all contracts for the disposition of cooperative interests signed in the Commonwealth by any
669 party, unless exempt under subsection B of § 55.1-2153. The Common Interest Community Board
670 regulations provisions under Article 5 (§ 55.1-2173 et seq.) apply to any such offering in the
671 Commonwealth.

672 E. This chapter does not apply to any cooperatives that receive federal funding pursuant to the
673 public housing or Section 8 program under the United States Housing Act of 1937, as amended.

674 F. This chapter does not apply to any cooperative that, when acquired by an association, is subject
675 to a mortgage or deed of trust securing an indebtedness owed to any government or governmental authority
676 to which the association has contractual obligations in addition to those set forth in such mortgage or deed
677 of trust.

678 **§ 55.1-2133. Powers of the association.**

679 A. Except as provided in subsection B, and subject to the provisions of the declaration, the
680 association, even if unincorporated, may:

- 681 1. Adopt and amend bylaws and rules and regulations;
- 682 2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for
683 common expenses from proprietary lessees;
- 684 3. Hire and discharge managing agents and other employees, agents, and independent contractors;
- 685 4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on
686 behalf of itself or two or more proprietary lessees on matters affecting the cooperative;
- 687 5. Make contracts and incur liabilities;
- 688 6. Regulate the use, maintenance, repair, replacement, and modification of common elements;
- 689 7. Cause additional improvements to be made as a part of the common elements;
- 690 8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or
691 personal property, but part of the cooperative may be conveyed, or all or part of the cooperative may be
692 subjected to, a security interest only pursuant to § 55.1-2144;

- 693 9. Grant easements, leases, licenses, and concessions through or over the common elements;
- 694 10. Impose and receive any payments, fees, or charges for the use, rental, or operation of the
695 common elements, other than limited common elements described in subdivisions 2 and 4 of § 55.1-2113,
696 and for services provided to proprietary lessees;
- 697 11. Impose charges for late payment of assessments and, after notice and an opportunity to be
698 heard, levy fines not to exceed \$50 for each instance for violations of the declaration, bylaws, and rules
699 and regulations of the association;
- 700 12. Impose reasonable charges for the preparation and recordation of amendments to the
701 declaration, resale certificates required by ~~§ 55.1-2161~~ 55.1-2309, or statements of unpaid assessments;
- 702 13. Provide for the indemnification of its officers and executive board and maintain directors' and
703 officers' liability insurance;
- 704 14. Assign its right to future income, including the right to receive common expense assessments,
705 but only to the extent the declaration expressly so provides;
- 706 15. Exercise any other powers conferred by the declaration or bylaws;
- 707 16. Exercise all other powers that may be exercised in the Commonwealth by legal entities of the
708 same type as the association; and
- 709 17. Exercise any other powers necessary and proper for the governance and operation of the
710 association.
- 711 B. The declaration shall not impose limitations on the power of the association to deal with the
712 declarant that are more restrictive than the limitations imposed on the power of the association to deal
713 with other persons.
- 714 **§ 55.1-2133.1. Installation of solar energy collection devices.**
- 715 A. As used in this section, "solar energy collection device" means any device manufactured and
716 sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive
717 heating panels or building components and solar photovoltaic apparatus.
- 718 B. No association shall prohibit an owner from installing a solar energy collection device on that
719 owner's property unless the recorded declaration for the association establishes such a prohibition.

720 However, an association may establish reasonable restrictions concerning the size, place, and manner of
721 placement of such solar energy collection devices on property designated and intended for individual
722 ownership and use. Any resale certificate pursuant to ~~§ 55.1-2161~~ 55.1-2309 given to a purchaser shall
723 contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install
724 or use solar energy collection devices on his property.

725 C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular
726 proposal (i) increases the cost of installation of the solar energy collection device by five percent over the
727 projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy
728 collection device by 10 percent below the projected energy production of the initially proposed
729 installation. The owner shall provide documentation prepared by an independent solar panel design
730 specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed
731 in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according
732 to the criteria established in this subsection.

733 D. The association may prohibit or restrict the installation of solar energy collection devices on
734 the common elements or common area within the real estate development served by the association. An
735 association may establish reasonable restrictions as to the number, size, place, and manner of placement
736 or installation of any solar energy collection device installed on the common elements or common area.

737 **§ 55.1-2151. Association records.**

738 The association shall keep financial records sufficiently detailed to enable the association to
739 comply with ~~§ 55.1-2161~~ 55.1-2309. All financial and other records shall be made reasonably available
740 for examination by any proprietary lessee and his authorized agents.

741 **§ 55.1-2162. Escrow of deposits.**

742 A. Any deposit made in connection with the purchase or reservation of a cooperative interest from
743 a person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 shall be
744 placed in escrow and held either in the Commonwealth or in the state in which the unit that is a part of
745 that cooperative interest is located in an account designated solely for that purpose by a title insurance
746 company, attorney, or real estate broker licensed under the laws of the Commonwealth, an independent

747 bonded escrow company, or an institution whose accounts are insured by a governmental agency or
748 instrumentality until (i) delivered to the declarant at closing, (ii) delivered to the declarant because of the
749 purchaser's default under a contract to purchase the cooperative interest, or (iii) refunded to the purchaser.

750 B. Any deposit made in connection with the purchase of a cooperative interest from a person not
751 required to deliver a public offering statement shall be placed in escrow in the same manner as prescribed
752 in subsection A. Upon receipt of the resale certificate called for in § ~~55.1-2164~~ 55.1-2309, should the
753 purchaser elect to void the contract, the seller may deduct the actual charges by the association for
754 preparation of the certificate. Otherwise, the deposit shall be promptly returned to the purchaser.

755 CHAPTER 23.1.

756 RESALE DISCLOSURE ACT.

757 **§ 55.1-2307. Definitions.**

758 As used in this chapter, unless the context requires a different meaning:

759 "Agent" means the authorized agent designated by the purchaser or seller in a ratified real estate
760 contract, listing agreement, or other writing designating such agent.

761 "Association" means an association created pursuant to the Property Owners' Association Act (§
762 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), or the Virginia Real Estate
763 Cooperative Act (§ 55.1-2100 et seq.), or a council of co-owners created pursuant to the Horizontal
764 Property Act (§ 55.1-2000 et seq.).

765 "Board" means the board of directors or executive board, of an association, except that in the case
766 of a horizontal property regime created pursuant to the Horizontal Property Act (§ 55.1-2000 et seq.).

767 "board" means the council of co-owners.

768 "Common interest community" means a condominium created pursuant to the Virginia
769 Condominium Act (§ 55.1-1900 et seq.) or the Horizontal Property Act (§ 55.1-2000 et seq.), a cooperative
770 created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or a property owners'
771 association subject to the Property Owners' Association Act (§ 55.1-1800 et seq.).

772 "Days" means calendar days.

773 "Declarant" means the same as that term is defined in §§ 55.1-1800 and 55.1-1900.

774 "Financial update" means updated financial information for the unit, including information
775 required by subdivisions A 4 and 5 of § 55.1-2310.

776 "Governing documents" means, to the extent applicable, the declaration, bylaws, organizing
777 articles, and any other foundational documents of the association and all amendments to such documents.

778 "Limited elements" means the limited common elements appurtenant to a condominium unit or
779 cooperative unit or the limited common area appurtenant to a lot.

780 "Managing agent" means a licensee who performs management services as defined in § 54.1-2345.

781 "Purchaser" means the person or entity acquiring the unit.

782 "Ratified real estate contract" or "contract" means the contract to purchase the unit and any
783 addenda to such contract.

784 "Resale certificate" means the information listed in § 55.1-2310.

785 "Rules and regulations" means restrictions or limitations adopted by the board or authorized
786 committee addressing the use, operation, appearance, or design of a portion of the common interest
787 community.

788 "Seller" means the person or entity selling the unit.

789 "Settlement agent" means the same as that term is defined in § 55.1-1000.

790 "Unit" means a condominium unit in a condominium, a cooperative unit in a real estate
791 cooperative, or a lot in a community governed by an association.

792 "Updated resale certificate" means an update of the resale certificate referenced in § 55.1-2311.

793 **§ 55.1-2308. Contract for resale; disclosures.**

794 Unless exempt pursuant to § 55.1-2317, any contract for the resale of a unit in a common interest
795 community shall disclose (i) that the unit is located in a common interest community; (ii) that the seller is
796 required to obtain from the association a resale certificate and provide it to the purchaser; (iii) the
797 purchaser's right to cancel the contract pursuant to § 55.1-2312; (iv) that the purchaser may request an
798 updated resale certificate pursuant to § 55.1-2311; and (v) that the purchaser's right to receive the resale
799 certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

800 If the contract does not contain the disclosures required by this section, the purchaser's sole remedy is to
801 cancel the contract prior to settlement.

802 **§ 55.1-2309. Resale certificate; delivery.**

803 A. The seller shall be required to obtain the resale certificate from the association and provide such
804 resale certificate to the purchaser.

805 B. Unless exempt pursuant to § 55.1-2317, the association, the association's managing agent, or
806 any third party preparing the resale certificate on behalf of the association shall deliver such resale
807 certificate within 14 days after a written request by a seller or seller's agent.

808 C. The association, association's managing agent, or any third party preparing the resale certificate
809 on behalf of the association shall deliver the resale certificate to the seller, or to such person as the seller
810 may direct, either printed or in a generally accepted electronic format as the seller may request.

811 D. The information contained in the resale certificate shall be current as of a date specified on the
812 resale certificate. The seller or purchaser may request an updated resale certificate as provided in § 55.1-
813 2311.

814 **§ 55.1-2310. Resale certificate; form and contents.**

815 A. The association shall include the completed resale certificate form, developed by the common
816 interest community board pursuant to subdivision 3 of § 54.1-2350, with supporting documentation set
817 out in the following order:

818 1. The name, address, and phone numbers of the preparer of the resale certificate and any managing
819 agent of the association;

820 2. A copy of the governing documents and any rules and regulations of the association;

821 3. A statement disclosing any restraint on the alienability of the unit for which the resale certificate
822 is being issued;

823 4. A statement of the amount and payment schedules of assessments and any unpaid assessments
824 currently due and payable to the association;

825 5. A statement of any other fees due and payable by an owner of the unit;

- 826 6. A statement of any other entity or facility to which the owner of the unit being sold may be
827 liable for assessments, fees, or other charges due to the ownership of the unit;
- 828 7. A statement of the amount and payment schedule of any approved additional or special
829 assessment and any unpaid additional or special assessment currently due and payable;
- 830 8. A statement of any capital expenditures approved by the association for the current and
831 succeeding fiscal years;
- 832 9. A statement of the amount of any reserves for capital expenditures and of any portions of those
833 reserves designated by the association for any specified projects;
- 834 10. The most recent balance sheet and income and expense statement, if any, of the association;
- 835 11. The current operating budget of the association;
- 836 12. The current reserve study, or a summary of such study;
- 837 13. A statement of any unsatisfied judgments against the association and the nature and status of
838 any pending actions in which the association is a party and that could have a material impact on the
839 association, the owners, or the unit being sold;
- 840 14. A statement describing any insurance coverage provided by the association for the benefit of
841 the owners, including fidelity coverage, and any insurance coverage recommended or required to be
842 obtained by the owners;
- 843 15. A statement as to whether the board has given or received written notice that any existing uses,
844 occupancies, alterations, or improvements in or to the unit being sold or to the limited elements assigned
845 thereto violate any provision of the governing documents or rules and regulations together with copies of
846 any notices provided;
- 847 16. A statement as to whether the board has received written notice from a governmental agency
848 of any violation of environmental, health, or building codes with respect to the unit being sold, the limited
849 elements assigned thereto, or any other portion of the common interest community that has not been cured;
- 850 17. A copy of any approved minutes of meetings of the board held during the last six months;
- 851 18. A copy of any approved or draft minutes of the most recent association meeting;

852 19. A statement of the remaining term of any leasehold estate affecting the common interest
853 community and the provisions governing any extension or renewal of such leasehold;

854 20. A statement of any limitation in the governing documents on the number or age of persons
855 who may occupy a unit as a dwelling;

856 21. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to
857 display the flag of the United States, including reasonable restrictions as to the size, time, place, and
858 manner of placement or display of such flag;

859 22. A statement setting forth any restriction, limitation, or prohibition on the right of an owner to
860 install or use solar energy collection devices on the owner's unit or limited element;

861 23. A statement setting forth any restriction, limitation or prohibition on the size, placement, or
862 duration of display of political, for sale, or any other signs on the property;

863 24. A statement identifying any parking or vehicle restriction, limitation, or prohibition in the
864 governing documents or rules and regulations;

865 25. A statement setting forth any restriction, limitation, or prohibition on the operation of a home-
866 based business that otherwise complies with all applicable local ordinances;

867 26. A statement setting forth any restriction, limitation, or prohibition on an owner's ability to rent
868 the unit;

869 27. In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for
870 federal income tax purposes by the owner of real estate taxes and interest paid by the association;

871 28. A statement describing any pending sale or encumbrance of common elements;

872 29. A statement indicating any known project approvals currently in effect issued by secondary
873 mortgage market agencies; and

874 30. Certification that the association has filed with the Common Interest Community Board the
875 annual report required by law, which certification shall indicate the filing number assigned by the
876 Common Interest Community Board and the expiration date of such filing.

877 **§ 55.1-2311. Updated resale certificate.**

878 A. If a resale certificate was issued more than 30 days but less than 12 months before settlement,
879 the seller or the purchaser, upon proof of being the contract purchaser of the unit, may request an updated
880 resale certificate. The updated resale certificate shall be delivered to the person requesting it, or as such
881 person may direct, in the format requested. The updated resale certificate shall be delivered within 10 days
882 after the written request.

883 B. The updated resale certificate shall contain current information for all items that may have
884 changed from the original resale certificate or a statement that there are no changes.

885 C. A settlement agent authorized by the seller or purchaser may request a financial update and the
886 association shall provide such information within three business days after the written request.

887 **§ 55.1-2312. Cancellation of contract by purchaser.**

888 A. The purchaser may cancel the contract:

889 1. Within three days, or up to seven days if extended by the ratified real estate contract, after the
890 ratification date of the contract if the purchaser receives the resale certificate, whether or not complete
891 pursuant to § 55.1-2310, or a notice that the resale certificate is unavailable on or before the date that the
892 contract is ratified;

893 2. Within three days, or up to seven days if extended by the ratified real estate contract, from the
894 date the purchaser receives the resale certificate, whether or not complete pursuant to § 55.1-2310, or a
895 notice that the resale certificate is unavailable if delivery occurs after the contract is ratified; or

896 3. At any time prior to settlement if the resale certificate is not delivered to the purchaser.

897 B. Written notice of cancellation shall be provided to the seller in accordance with the terms of the
898 contract. The purchaser shall have the burden to demonstrate delivery of the notice of cancellation.

899 C. If the unit is governed by more than one association, the timeframe for the purchaser's right of
900 cancellation shall run from the date of delivery of the last resale certificate.

901 D. Cancellation shall be without penalty, and the seller shall cause any deposit or escrowed funds
902 to be returned promptly to the purchaser.

903 **§ 55.1-2313. Liability for resale certificate.**

904 A. A seller providing a resale certificate pursuant to § 55.1-2310 or 55.1-2311 shall not be liable
905 to the purchaser for any erroneous information provided by the association and included in the certificate
906 or for the failure or delay of the association to provide the resale certificate in a timely manner.

907 B. A purchaser shall not be liable for any unpaid assessment or fee greater than the amount set
908 forth in the resale certificate, updated resale certificate, or financial updated. The association shall, as to
909 the purchaser, be bound by the information provided in the resale certificate or updated resale certificate
910 as to the amounts of current assessments, including any approved special or additional assessments, and
911 any violation of the governing documents or rules and regulations as of the date of the resale certificate,
912 updated resale certificate, or financial update unless the purchaser had actual knowledge that the contents
913 of the resale certificate were in error.

914 **§ 55.1-2314. Failure to provide resale certificate; no waiver.**

915 A. If an association, the association's managing agent, or any third party preparing a resale
916 certificate fails to comply with § 55.1-2310 or 55.1-2311, the purchaser shall not be required to pay any
917 delinquent assessments or remedy any violation of the governing documents or rules and regulations
918 existing as of the date of the resale certificate or updated resale certificate. The association may only
919 enforce a violation incurred by a previous owner against a purchaser if (i) such violation has been properly
920 noted in the resale certificate or updated resale certificate or (ii) the seller failed to provide the resale
921 certificate to the purchaser as required by § 55.1-2309.

922 B. The purchaser shall abide by the governing documents and rules and regulations as to all matters
923 arising after acquiring the unit regardless of whether such purchaser received a resale certificate.

924 C. The preparer of the resale certificate or updated resale certificate shall be liable to the seller in
925 an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000.

926 D. The Common Interest Community Board may assess a monetary penalty for failure to deliver
927 the resale certificate or updated resale certificate as required against any (i) association pursuant to § 54.1-
928 2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated
929 thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352.

930 **§ 55.1-2315. Properties subject to more than one declaration.**

931 If the unit is subject to more than one common interest community, each association, the
932 association's managing agent, or any third party preparing a resale certificate on behalf of an association
933 shall provide a resale certificate for that association and may charge the appropriate fees.

934 **§ 55.1-2316. Resale certificate; fees.**

935 A. An association may charge fees for preparation, delivery, and expedited delivery of a resale
936 certificate, an updated resale certificate, or financial update and for the inspection of a unit performed to
937 prepare the resale certificate or updated resale certificate. Unless provided otherwise by the association,
938 the appropriate fees shall be paid when the resale certificate, updated resale certificate, or financial update
939 is requested. The seller shall be responsible for all fees associated with the preparation and delivery of the
940 resale certificate, including any fees for inspection of the unit. The requesting party shall pay any fees for
941 the preparation and delivery of the updated resale certificate or financial update.

942 B. The Common Interest Community Board shall establish the maximum fees that the association
943 may charge for such preparation, delivery, and inspection; such maximum fees shall be commercially
944 reasonable and consistent with the effort required to comply with the resale certificate requirements. The
945 maximum allowable fees shall be adjusted no less than every five years, as of January 1 of that year, in an
946 amount not less than the annual increases for that five-year period in the United States Average Consumer
947 Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of
948 the U.S. Department of Labor or an equivalent successor index.

949 C. The association shall publish and make available a schedule of the applicable fees (i) for
950 preparation and delivery of the resale certificate, updated resale certificate, and financial update; (ii) for
951 the inspection of a unit; and (iii) related to any post-closing costs.

952 D. A post-closing fee to be collected at settlement, may be imposed on the purchaser of the
953 property for the purpose of establishing the purchaser as the owner of the property in the records of the
954 association. Any such post-closing fee shall not exceed \$50.

955 E. No association may collect fees authorized by this section unless the association (i) is registered
956 with the Common Interest Community Board; (ii) is current in filing the most recent annual report and fee
957 with the Common Interest Community Board pursuant to § 55.1-1835; (iii) is current in paying any

958 assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5; and (iv) provides
959 the option to receive the disclosure packet electronically.

960 **§ 55.1-2317. Exemptions**

961 A. The resale certificate required by this chapter need not be provided in the case of:

962 1. An initial disposition by a declarant;

963 2. A disposition of a unit by gift;

964 3. A disposition of a unit pursuant to court order if the court so directs;

965 4. A disposition of a unit by foreclosure or deed in lieu of foreclosure;

966 5. A disposition of a unit by a sale at auction, when the resale certificate was made available as
967 part of the auction package for prospective purchasers prior to the auction; or

968 6. A disposition of a unit in a common interest community containing no residential units.

969 B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the
970 sale or resale of a unit, the trustee shall obtain the resale certificate from the association and provide the
971 resale certificate to the purchaser.

972 **2. That Article 2 (§§ 55.1-1808 through 55.1-1814) of Chapter 18 and Article 5 (§§ 55.1-1990 through**
973 **55.1-1995) of Chapter 19 of Title 55.1 and § 55.1-2161 of the Code of Virginia are repealed.**

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